IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JENNIFER HEFLEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 4:15-cv-001578-ERW
	)	
J&M SECURITIES, ET AL.,	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION TO STAY PROCEEDINGS[1]

COME NOW Defendants, by and through their undersigned counsel, and for and in support of their motion to stay proceedings, states as follows:

1. Plaintiff's suit alleges a violation of both the Fair Debt Collection Practices Act (FDCPA) and a wrongful garnishment.[2]

2. A key allegation made by the Plaintiff is that the defendants improperly attempted to collect pre-judgment interest to which they were not entitled (See First Amended Complaint (Doc. 13), ¶¶12-19, 32-45, 76(a)-(c), 58, 66.

3. Plaintiff has given notice that she intends to depose Defendant Shannon Metzger. It is expected that a point of inquiry in this deposition will

[1] Given the discretionary nature of this motion, Defendants request they be excused from filing a separate suggestions in support as required by Local Rule 7-4.01.

[2] Plaintiff's suit also alleges additional counts related to a violation of the bankruptcy stay and abuse of process.

be the question of pre-judgment interest. It is also expected that Plaintiff will file a motion for summary judgment on this issue.

4. This issue of post-judgment interest in in flux in both Missouri as well as in this Court.

5. The United States District Court, Eastern District of Missouri has considered the issue of post-judgment interest twice within the last year.:

a. On August 5, 2016, Judge Fleissig found in the matter of Layton v. Frontline, 4:16-cv-00454 (EDMO) that post-judgment interest is collectable in a non-tort case even if the judgment did not specifically award such interest." See 4:16-cv-00454 (Doc. 26);

b. This Court reached a different result on July 25, 2016, in Banks v. Slay, 4:13-cv-02158 (EDMO) holding that "it does not matter…whether the judgment was in tort or in a non-tort action, because where the judgment was appropriate, interest was still not allowed because it substantially changed the nature of the judgment."

6. In Missouri state courts, the issue of post-judgment interest is pending before the court in the matter of Thomas Dennis and Sonya Cherry v. Riezman Berger, P.C. and Mercy Hospital Jefferson, *Appeal No. ED103904 (Mo.App. E.D.).* A three-judge panel of the Missouri Court of Appeals issued an opinion in Dennis on September 20, 2016, finding that post-judgment interest was not allowed unless specifically awarded. The Dennis case is now

pending a motion for rehearing, or alternatively an application for transfer to the Missouri Supreme Court (filed October 5, 2016)

7. The issue of post-judgment interest is a creature of Missouri statute and Missouri statutory interpretation. As the issue is still under consideration by an intermediate Missouri appellate Court, Defendants respectfully request that this litigation be stayed, pending a determination of the issue of post-judgment interest by Missouri state courts.

8. The decision of whether to grant a stay is left to the sound discretion of the Court. Landis v. North American Co., 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163 (1936).

WHEREFORE, for the foregoing reasons, Defendants respectfully request that the Court stay these proceedings until such time as the question of how post-judgment interest is resolved by the Missouri State Courts (which decision appears imminent); and for such further relief as the Court may deem just and proper in the premises.

Respectfully submitted,

NEWTON BARTH, L.L.P.

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Certificate of Service

The undersigned here by certifies that on information and belief on this 21st day of October, 2016, counsel for all parties to this proceeding were served with this document through the Court's electronic filing system.

/s/ T.E. Newton IV